S.B.CIVIL WRIT PETITION NO.5380/2006

Dr.(Smt.)Shipra Saha
v.
State of Rajasthan & Ors.

Date of Order :: 5th December, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. Shyam Ladrecha, Addl. Govt. Advocate.

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The petitioner while holding the post of Lecturer at Government College, Barmer was served with a memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958") with a proposal to hold an inquiry for alleged violation of Rule 25 of the Rajasthan Civil Services (Conduct) Rules, 1971 (hereinafter referred to as "the Rules of 1971"). According to the statement of allegation served upon the petitioner alongwith memorandum referred above dated 22.4.2004 the petitioner solemnised marriage with Dr. Sangat Singh during life time of his first wife and that amounts violation of Rule 25 of the Rules of 1971. The petitioner denied the allegation by submitting a written statement stating therein that she married with Dr. Sangat Singh about 15 years back by getting herself satisfied that Dr. Sangat Singh has divorced his first wife Smt. Bhanwari Devi. The petitioner in

quite unambiguous terms stated that she personally met to Smt. Bhanwari Devi first wife of Dr. Sangat Singh before solemnising the marriage and verified that a divorce has already taken place between Smt. Bhanwari Devi and Dr. Sangat Singh.

The disciplinary authority after considering written submitted by the petitioner chose to appoint an inquiry officer to hold regular inquiry in the matter. The petitioner by communication dated 28.1.2005 made a request to the disciplinary authority to change the inquiry officer being bias, however, no action thereon was taken. For certain reasons the petitioner did not participate in the inquiry and the inquiry officer submitted his report to the disciplinary authority, a copy whereof was supplied to the petitioner alongwith a notice dated 22.3.2005 issued by the disciplinary authority instructing the petitioner to submit her comments and representation with regard to report of the inquiry officer. The petitioner submitted her explanation to the disciplinary authority on 17.5.2005 asserting therein that before solemnising marriage with Dr. Sangat Singh she confirmed from Dr. Sangat Singh, his first wife Smt. Bhanwari Devi and other relatives of Dr. Sangat Singh that a divorce has already taken place, as such there was no marriage solemnised during the currency of earlier marriage of Dr. Sangat Singh.

The disciplinary authority by an order dated 28.7.2006, while relying upon the findings given by the inquiry officer imposed a penalty of removal upon the petitioner, hence this petition for writ.

With consent of counsel for the parties the writ petition is heard for final disposal.

While giving challenge to the order aforesaid it is contended by counsel for the petitioner that no charge for violation of Rule 25 of the Rules of 1971 is made out against the petitioner as (1)she never solemnised marriage during the life time of the wife of Dr. Sangat Singh. Smt. Bhanwari Devi after divorce could not be held a wife of Shri Sangat Singh; (2)the finding given by the inquiry officer and its affirmance by the disciplinary authority is not supported by evidence, therefore, it is a case of no evidence; (3)the order passed by the disciplinary authority is in violation of principles of natural justice and reasonable opportunity as no reasonable opportunity to defence was given to the petitioner; and (4)the findings given under the order passed by the disciplinary authority are not supported by reasons.

A reply to the writ petition has been filed on behalf of the respondents in general defending the order passed by the disciplinary authority.

The first contention of counsel for the petitioner is that the charge levelled against the petitioner is not made out for the reason that she never married to Dr. Sangat Singh during currency of his earlier marriage, is required to be examined on basis of the evidence adduced by the department to establish the allegation. It shall also be appropriate while dealing with this contention the argument of the counsel for the petitioner that the instant one is a case of no evidence, be also dealt with.

I have examined the report of inquiry officer. The inquiry officer by an order dated 24.12.2004 decided to proceed exparte against the petitioner as she did not choose to appear before the inquiry officer. The inquiry officer recorded statements of Shri K.R.Mehra, Principal, Government College, Barmer who conducted a preliminary inquiry. The inquiry officer also considered the written arguments submitted by the departmental nominee. The entire finding of the inquiry officer holding the petitioner guilty for violation of Rule 25 of the Rules of 1971 is based on the statement of Shri K.R.Mehra. As a matter of fact Shri K.R.Mehra in his statements admitted the documents considered by him while holding a preliminary inquiry. The record of the preliminary inquiry also consists of the statement of the petitioner wherein she in quite unambiguous terms

stated that the first wife of Dr. Sangat Singh accepted that a divorce has already taken and her marriage with Dr. Sangat Singh is not in existence. Shri K.R.Mehra found the petitioner prima facie guilty for violation of the provisions of Rule 25 of the Rules of 1971 only on the count that she failed to produce any decree by a competent court for dissolution of marriage of Dr. Sangat Singh with Smt. Bhanwari Devi. A dissolution of marriage is not necessarily always by the decree of competent court but may it be by the customs prevailing in the caste concern. The finding given by the officer holding preliminary inquiry is only to examine that prima facie an allegation of misconduct is proved. The inquiry officer should have examined the entire record and only on basis of a cogent evidence would have given a finding of guilty. It is surprising that the inquiry officer without analysing the evidence adduced during the preliminary inquiry as verified by Shri K.R.Mehra during the regular inquiry gave a finding of guilty. It is true that after admission of the documents by Shri K.R.Mehra in regular inquiry it was open for the inquiry officer to look into the record of preliminary inquiry but while relying upon those documents the inquiry officer should have discussed their implication.

In the instant matter the inquiry officer by placing simple reliance upon the statements recorded

during preliminary inquiry held the petitioner guilty. As a matter of fact no evidence was available with the inquiry officer to prove the charge against the petitioner except the statements recorded during the preliminary inquiry by Shri K.R.Mehra and that evidence has not been analysed and discussed by the inquiry officer. A government servant cannot be held guilty of misconduct merely because of an adverse report of preliminary inquiry. Quite a more is required to establish guilty of a charge of misconduct by a regular inquiry than to a prima facie existence of a misconduct. There is nothing on record to held the petitioner guilty, as such it can very well be said that the present one is a case of no evidence.

I also found force in the contention of counsel for the petitioner that the order of disciplinary authority also suffers from a lacunae that the same is not speaking and reasoned one. The disciplinary authority has first reproduced the findings given by the inquiry officer and then explanation submitted by the petitioner. The disciplinary authority without considering the explanation submitted by the petitioner accepted the findings given by the inquiry officer and imposed a penalty of removal upon the petitioner. The petitioner in her explanation dated 17.5.2005 in quite unambiguous terms stated that according to her knowledge and information Dr. Sangat Singh was a

divorced person at the time of their marriage. This fact was substantiated by Smt. Bhanwari Devi, first wife of Dr. Sangat Singh and by other relatives. The disciplinary authority should have considered this fact while passing the order impugned. If a lady solemnised marriage with a bonafide belief that the person to whom she is marrying is divorced then she cannot be held guilty for a bigamy. The disciplinary authority must have inquired the issue as to whether the petitioner at the time of her marriage with Dr. Sangat Singh was aware about the currency of his first marriage or not. In absence of such a probe and finding to that effect, the charge of violation of Rule 25 of the Rules of 1971 cannot be held established against the petitioner. No such exercise has been done in the instant matter and, therefore, the order passed by the disciplinary authority is also bad in eye of law.

For the reasons mentioned above, this petition for writ is allowed. The order impugned Anx.18 dated 28.7.2006, therefore, is quashed.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.